

SENSITIVE

COMMISSION
SECRETARIAT

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

2012 APR -9 P 2: 36

FIRST GENERAL COUNSEL'S REPORT

RR 11L-34

DATE RECEIVED: December 21, 2011

DATE ACTIVATED: February 9, 2012

EARLIEST SOL: October 15, 2015

LATEST SOL: April 15, 2016

SOURCE:

Internally Generated

RESPONDENT:

Chuck Wilkerson for Congress and Patricia Louise Motta, in her official capacity as treasurer

RELEVANT STATUTES:

2 U.S.C. § 434(b)

11 C.F.R. § 104.3

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Reports Analysis Division ("RAD") referred Chuck Wilkerson for Congress and Patricia Louise Motta, in her official capacity as treasurer ("Respondent" or "Committee"), to the Office of the General Counsel ("OGC") for failing to disclose a total of \$11,060.24 in receipts and \$129,462.15 in disbursements in its original 2010 October Quarterly, 2010 12 Day Pre-General, 2010 30 Day Post-General, and 2011 April Quarterly Reports. Responding to the Referral on behalf of the Committee, Mr. Wilkerson acknowledged the reporting errors

We recommend that the Commission open a MUR in connection with RR 11L-34 and find reason to believe that the Committee violated 2 U.S.C. § 434(b) by failing to accurately disclose receipts and disbursements in reports to the Commission. Additionally, we recommend

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that the Commission enter into pre-probable cause conciliation with the Committee

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Charles Wilkerson was the Republican candidate for the U.S. House of Representatives from California's 30th Congressional District in 2010. His designated principal campaign committee is Chuck Wilkerson for Congress. Patricia Louise Motta is the Committee's treasurer. The Committee filed its Statement of Organization on March 16, 2010, and has filed regular disclosure reports since that date.¹

The Committee timely filed its 2010 October Quarterly, 2010 12 Day Pre-General, 2010 30 Day Post-General Reports, and filed its 2011 April Quarterly Report two days after the filing due date. However, the Committee filed several amendments to each of these reports, some of which disclosed additional activity not included in the original reports, as reflected in the chart below.

Report	Date(s) of Amendment(s)	Amount of Increased Receipts	Amount of Increased Disbursements	Total Increased Activity
2010 Oct. Quarterly	July 28, 2011	\$11,060.24	\$5,753.11	\$16,813.35
2010 Pre-General	August 4, 2011	NA	\$439.30	\$439.30
2010 Post-General	July 15, 2011 July 28, 2011 August 4, 2011	NA	\$121,958.43	\$121,958.43
2011 April Quarterly	August 4, 2011	NA	\$1,311.31	\$1,311.31
	TOTAL	\$11,060.24	\$129,462.15	\$140,522.39

¹ Wilkerson lost the 2010 general election, and the Committee requested to terminate on November 16, 2011.

1 On September 2, 2011, RAD sent the Committee a Request for Additional Information
2 ("RFAI") regarding the increased activity disclosed on these reports.² Letter from Bradley
3 Matheson, Senior Campaign Finance Analyst, Federal Election Commission, to Patricia Louise
4 Motta, Treasurer, Chuck Wilkerson for Congress (Sept. 2, 2011) (on file at www.fec.gov). The
5 RFAI noted that the amended reports disclosed a substantial increase in the amount of receipts
6 and disbursements from those disclosed in the original reports, and requested that the Committee
7 either amend the reports or provide an explanation to clarify why the additional activity was not
8 provided in the original reports. *Id.*

9 Mr. Wilkerson responded to the RFAI on behalf of the Committee, explaining that the
10 amendments were the result of a thorough review of the Committee's receipts and
11 disbursements. *See* Form 99 filed September 22, 2011. Specifically, he explained that:

- 12 • The original 2010 October Quarterly Report failed to account for campaign expenditures
13 made on Mr. Wilkerson's personal credit card. These expenditures were entered as
14 campaign contributions by the candidate and as additional disbursements on the amended
15 report.³
- 16 • The entries on Schedule B were inadvertently omitted from the original 2010 30 Day
17 Post-General Report. When Schedule B was included, the amount of disbursements
18 disclosed for operating expenditures increased from \$0.00 to \$121,958.43.⁴
- 19
- 20

² Although the Committee had received prior RFAI's regarding these reports, those RFAI's did not concern the amount of receipts and disbursements disclosed. The September 2, 2011 RFAI also addressed other issues that were not referred to OGC.

³ The Amended 2010 October Quarterly Report discloses previously unreported contributions by the candidate that were reflected in the original report only as disbursements. The amended report thus includes both the in-kind contribution from the candidate and the related disbursement. It appears that these in-kind contributions from the candidate, while properly itemized in Schedule A of the amended report, were misidentified on the Summary Page as Line 11(a) (Contributions from Individuals) instead of Line 11(d) (Contributions from the Candidate).

⁴ The Committee's original 2010 30 Day Post-General Report actually included a portion of Schedule B itemizing disbursements reported on Line 19(a) (Loan Repayments Made to the Candidate), but did not include the portion of Schedule B itemizing disbursements reported on Line 17 (Operating Expenditures), which was included in the amended reports.

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- Certain loan repayments made to the candidate were overlooked in the original 2011 April Quarterly Report, but were included in the amended report.

RAD referred the Committee to the Office of the General Counsel for failing to disclose \$11,060.24 of receipts and \$129,462.15 in disbursements in its original 2010 October Quarterly, 2010 12 Day Pre-General, 2010 30 Day Post-General, and 2011 April Quarterly Reports. See Memorandum from Patricia Carmona, Chief Compliance Officer, Federal Election Commission, to Anthony Herman, General Counsel, Federal Election Commission (Dec. 21, 2011) (hereinafter "Referral").

On December 30, 2011, this Office notified the Respondent of the Referral in accordance with the Commission's policy regarding notification in non-complaint generated matters. See 74 Fed. Reg. 38617 (August 4, 2009). Upon notification of the RAD Referral, Mr. Wilkerson again responded on behalf of the Committee, acknowledging the reporting errors and requesting conciliation. See Memorandum from Charles Wilkerson, Charles Wilkerson for Congress, to Office of the General Counsel (Jan. 10, 2012) (hereinafter "Response"). He explains that, despite his lack of campaign experience, he relied on his background as a small business owner to personally take responsibility for the Committee's disclosure reports. As a consequence, he

continues, the disclosure reports contained errors, and, after the general election, he ultimately reviewed the Committee's entire reporting record and made final corrections. *See* Response at 2. He does not further elaborate on the corrections, but rather refers back to the explanations he provided in response to the RFAI. *See id.*

B. Legal Analysis

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 2 U.S.C. § 434. *See* 2 U.S.C. § 434(a)(1) and 11 C.F.R. § 104.1(a). These reports must include, *inter alia*, the total amount of receipts and disbursements. *See* 2 U.S.C. § 434(b); 11 C.F.R. § 104.3. Committees are also required to disclose itemized breakdowns of receipts and disbursements and disclose the name and address of each person who has made any contribution or received any disbursement in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such contribution or disbursement. *See* 2 U.S.C. § 434(b)(2) - (6); 11 C.F.R. § 104.3(a)(3) and (4); 11 C.F.R. § 104.3(b)(2) and (4).

The Committee did not comply with the Act's reporting requirements when it failed to disclose \$11,060.24 in receipts and \$129,462.15 in disbursements on its original reports filed with the Commission. The Committee failed to disclose \$11,060.24 in receipts and \$5,753.11 in disbursements on its original 2010 October Quarterly Report, \$439.30 in disbursements on its original 2010 12 Day Pre-General Report, \$121,958.43 in disbursements on its original 2010 30 Day Post-General Report, and \$1,311.31 in disbursements on its original 2011 April Quarterly Report. Therefore, we recommend the Commission find reason to believe that the Committee violated 2 U.S.C. § 434(b).

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1 **IV. RECOMMENDATIONS**

- 2 1. Open a MUR in RR 11L-34.
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- 4 2. Find reason to believe that Chuck Wilkerson for Congress and Patricia Louise
- 5 Motta, in her official capacity as treasurer, violated 2 U.S.C. § 434(b).
- 6
- 7 3. Approve the attached Factual & Legal Analysis.
- 8
- 9 4. Enter into conciliation with Chuck Wilkerson for Congress and Patricia Louise
- 10 Motta, in her official capacity as treasurer, prior to a finding of probable cause to
- 11 believe.
- 12
- 13 5. --
- 14
- 15

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6. Approve the appropriate letters.

4-9-12

Date

Attachments:


1. Factual & Legal Analysis

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Daniel A. Petalas
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BY:


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